

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

)	
UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 18-cv-5587
)	
v.)	Hon. Manish S. Shah
)	
EQUITYBUILD, INC., EQUITYBUILD)	Magistrate Judge Young B. Kim
FINANCE, LLC, JEROME H. COHEN,)	
and SHAUN D. COHEN,)	
)	
Defendants.)	
)	

RECEIVER'S PROPOSAL REGARDING REMAINING CLAIM GROUPS

Pursuant to the Court's orders (Dkt. 1475 and 1483), the Receiver hereby submits the following proposed redefinition of claim groups and proposed approach to the scheduling of the claims process. In preparing this recommendation, the Receiver has received input and feedback from the SEC, the institutional lenders, and certain investor lenders. While there is neither unanimity nor clear consensus, the Receiver's proposal is designed to:

First, complete the claims process for all groups and claims as quickly as possible on a schedule that the Receivership team believes in good faith that it can meet.

Second, incorporates and accounts for the input and feedback received from all interested parties that have provided the same to the Receiver, and when not able to accommodate others' requests nevertheless sets forth a plan and schedule that is fair, equitable, and realistic.

Third, provides realistic timing and check-in points to ensure the process continues to move forward effectively and efficiently.

1. Claim Groups

Through his work evaluating the claims against the properties, the Receiver, as well as certain claimants with which the Receiver has engaged in discussions, believe that the nature of the claims against certain of the properties will not require as extensive of a claims process as the process set forth in the Court's Order Regarding Claims Resolution Process. (Dkt. 941) Accordingly, the Receiver submits the attached Exhibit A, which adjusts the property groupings previously approved in Exhibit A to that Order. The Receiver understands that the Institutional Lenders disagree with some of the assignments reflected by Exhibit A. The Receiver briefly summarizes his recommendations for each group as follows:

Group 1	Claims process complete Distribution order entered 5/3/23 (Dkt. 1451) Motion to stay distribution pending (Dkt. 1455, 1470, 1473, 1479)
Group 2	In process
Group 3	In process
Group 4	No institutional lender Recommend similar process to Group 3
Group 5	Streamlined recommendation on priority issue due to only one recorded lien claim. Recommend similar process to Group 3
Group 6	Needs additional work due to unique issues. Some of these properties were looked at in the context of settlement discussions with Judge Kim, which revealed individualized issues that will need to be addressed. Receiver suggests setting a status date to address process recommended to address these disputed claims.
Group 7	At this time, Receiver recommends process approved in Dkt. 941, however, some streamlining may be appropriate due to overlap with issues addressed by the Court in Group 1. Such overlapping issues include but are not limited to issues regarding the impacts of executing a Collateral Agency and Servicing Agreement, releases provided by EquityBuild, and authorizations included in loan documentation.

Group 8	At this time, Receiver recommends process approved in Dkt. 941, however, some streamlining may be appropriate due to overlap with issues addressed by the Court in Group 1. Such overlapping issues include but are not limited to issues regarding the impacts of executing a Collateral Agency and Servicing Agreement, releases provided by EquityBuild, and authorizations included in loan documentation.
Group 9	Receiver recommends claims process not proceed while the FHFA appeal is pending. However, the Receiver has invited settlement discussions to attempt resolution of claims and appeal.
Group 10	Unsecured claims and unsecured portions of secured claims Receiver to propose distribution plan from unencumbered funds.

2. Schedule

Based on the fact that the Receiver is still in the process of reviewing the claims in Groups 4-10 in order to ensure that all claimants have an opportunity to have their claim considered, as well as the volume of discovery submitted by the Group 2 claimants and the work required to complete the claims process for Groups 2 and 3, the Receiver does not anticipate being in a position to start additional groups this summer.

Additionally, there are several unknown factors that could impact the schedules of pending Groups 2 and 3 which makes it difficult to anticipate when these groups will be completed, namely (1) whether any Group 3 claimants request discovery, and (2) whether there are adjustments to the Group 2 schedule (*see* 5/15/23 Minute Order, Dkt. 1475). But assuming the schedules for Groups 2 and 3 are not adjusted and the process for those groups remains on track, the Receiver estimates that the receivership team will be in a position to start **Group 4** and **Group 5** on or about September 15, 2023, utilizing a more streamlined process similar to that ordered for Group 3 (Dkt. 1477), which the Receiver believes can be completed in 3 to 3 1/2 months.

The Receiver recommends that the Court set a status hearing on or around September 12, 2023, for the Receiver to report the Court whether he is on track to commence these groups on this

schedule, and to determine the appropriate process for resolution of the Group 6 claims. The Receiver estimates that he will be in a position to start **Group 6** in January 2024.

Depending on the process that the Court approves for Group 6, the Receiver will either recommend starting the **Group 7** process concurrently with Group 6, or immediately after Group 6 is finished, utilizing the claims process ordered for Groups 1 and 2. (Dkt. 941) The Receiver anticipates being in a position to start **Group 8** after Group 7 is finished, which would be approximately six months from the commencement of Group 7.¹ However, the Receiver believes that a more streamlined process also may be possible for Groups 7 and 8, in which already-decided issues similar to Group 1 are involved.² If the Court were to adopt a different procedure for handling Groups 7 and 8 because of the overlap with certain issues addressed with respect to Group 1, perhaps the timing for such groups could be further streamlined, but any such alternative must recognize that those two groups involve 23 properties, multiple lenders and nearly 700 claims filed.³

As the Court is aware, the FHFA has appealed this Court's decision regarding the two properties that have been placed in **Group 9**, and the Seventh Circuit currently is evaluating the

¹ The Receiver understands that the Institutional Lenders in Groups 7 and 8 request that the process for adjudicating those groups be determined after the Court of Appeals rules on Group 1.

² The Institutional Lenders disagree with the Receiver's position that the ruling on Group 1 should have influence over subsequent groups because (a) the Claims Process Order (Dkt. 941) provides: "The Court will issue a written ruling as to each Group. The ruling as to any particular Group of properties identified in any of the Receiver's Framing Reports will not have preclusive effect with respect to any property or claimant that is not the subject of the pending Framing Report"; and (b) because different facts or theories may be asserted in later groups, including based on the appellate ruling. Counsel for Certain Individual Investors support the Receiver's position generally and would suggest that there may be ways to further speed up the claims process, including by modifying the current process that calls for all claimants in a group to submit responses to standard discovery requests.

³ The Court may wish to consider off-the-record discussions with representatives of Groups 7 and 8 (as well the SEC and Receiver) where alternative processes for such claims could be discussed.

Receiver's motion to dismiss the appeal. The Receiver has invited the FHFA to participate in efforts to resolve all issues on the properties while the appeal is pending. Such efforts can occur concurrently with the ongoing groups. Otherwise, the properties in that group can proceed in an appropriate group after the appeal is dismissed and/or otherwise resolved on appeal.

Finally, **Group 10** involves distribution to unsecured creditors and the unsecured portions of claims by secured creditors. The full panoply of unsecured claims will not be known until the disputed claims are resolved, so it is Receiver's recommendation that Group 10 will proceed at the end of the claims process.

WHEREFORE, the Receiver requests that the Court approve revisions to the claims process, claims groups, and schedule in accordance with the Receiver's recommendations and orders such other relief that is fair and equitable.

Dated: June 15, 2023

Respectfully submitted,

KEVIN B. DUFF, RECEIVER

By: /s/ Michael Rachlis

One of his attorneys

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CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing **Receiver's Proposal Regarding Remaining Claim Groups**, via ECF filing, to all counsel of record on June 15, 2023.

I further certify that I caused true and correct copy of the foregoing to be served upon all known individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form).

/s/ Michael Rachlis

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Exhibit A

Property#	Property Address	# of claims	Claims against related fund	Total Claims	Institutional Lender
<u>Group 1</u>					
74	3074 Cheltenham Place	49			BC57, LLC
75	7625-33 S East End Avenue	21			BC57, LLC
76	7635-43 S East End Avenue	31			BC57, LLC
77	7750-58 S Muskegon Avenue	44			BC57, LLC
78	7201 S Constance Avenue	33			BC57, LLC
		178		178	
<u>Group 2</u>					
1	1700-08 Juneway Terrace	76			Thorofare Asset Based Lending REIT Fund IV, LLC
4	5450-52 S Indiana Avenue	70			Shatar Capital Inc.
5	7749-59 S Yates Boulevard	68			Shatar Capital Inc.
79	6160-6212 S Martin Luther King Drive	83			Direct Lending Partner LLC
101	6949-59 S Merrill Avenue	5			Thorofare Asset Based Lending REIT Fund IV, LLC
		302		302	
<u>Group 3</u>					
10	7301-09 S Stewart Avenue	68			n/a
11	7500-06 S Eggleston Avenue				n/a
12	3030-32 E 79th Street				n/a
13	2909-19 E 78th Street	96			n/a
14	7549-59 S Essex Avenue				n/a
15	8047-55 S Manistee Avenue				n/a
102-106	7927-47 S Essex Avenue	36			n/a
		200		200	
<u>Group 4</u>					
6	6437-31 S Kenwood Avenue	43			n/a
9	8100 S Essex Avenue	59			n/a
58	5955 S Sacramento Avenue	19			n/a
59	6001-05 S Sacramento Avenue	21			n/a
60	7026-42 S Cornell Avenue	43			n/a
61	7237-43 S Bennett Avenue	44			n/a
62	7834-44 S Ellis Avenue	43			n/a
71	701-13 S 5th Avenue, Maywood	40			n/a
100	11117-11119 S Longwood Drive	62			n/a
116	1102 Bingham St, Houston TX 77007	15			n/a
141	431 E. 42nd Place	1			n/a
		390		390	

Exhibit**A**

Exhibit A

Property#	Property Address	# of claims	Claims against related fund	Total Claims	Institutional Lender
<u>Group 5</u>					
3	5001 S Drexel Boulevard	22	1	23	Wilmington Trust
49	7300-04 St Lawrence Avenue	7		7	Midland - EB South Chicago 3
52	310 E 50th Street	3		3	Midland - EB South Chicago 4
63	4520-26 S Drexel Boulevard	23	27	50	US Bank
		55		83	
<u>Group 6</u>					
8	1414 & 1418 East 62nd Place	2			n/a
68	6217-27 S Dorchester Avenue	61			Citibank
107	1422-24 East 68th Street	4			UBS blanket mortgage
108	2800-06 E 81st Street	3			UBS blanket mortgage
109	4750-52 S Indiana Avenue	9			UBS blanket mortgage
110	5618-20 S Martin Luther King Drive	6			UBS blanket mortgage
111	6558 S Vernon Avenue	11			UBS blanket mortgage
112	7450 S Luella Avenue	5			UBS blanket mortgage
113	7840-42 S Yates Avenue	3			UBS blanket mortgage
50	7760 S Coles Avenue	11			Midland - EB South Chicago 3
51	1401 W 109th Place	3			Midland - EB South Chicago 4
53	6807 S Indiana Avenue	3			Midland - EB South Chicago 4
54	8000-02 S Justine Street	5			Midland - EB South Chicago 4
55	8107-09 S Ellis Avenue	10			Midland - EB South Chicago 4
56	8209 S Ellis Avenue	11			Midland - EB South Chicago 4
57	8214-16 S Ingleside Avenue	4			Midland - EB South Chicago 4
		151		151	
<u>Group 7</u>					
2	4533-47 S Calumet Avenue	45			BMO
7	7109-19 S Calumet Avenue	8			US Bank
64	4611-17 S Drexel Boulevard	50			Citibank
69	6250 S Mozart Avenue	32			Citibank
70	638-40 N Avers Avenue	23			Freddie Mac
73	7255-57 S Euclid Avenue	34			Citibank
		192		192	

Exhibit A

		Claims against		Total Claims	Institutional Lender
Property#	Property Address	# of claims	related fund		
<u>Group 8</u>					
80	2736 W 64th Street	17			Liberty EBCP, LLC
81	4317-19 S Michigan Avenue	19			Liberty EBCP, LLC
82	6355-59 S Talman Avenue	24			Liberty EBCP, LLC
83	6356 S California Avenue	19			Liberty EBCP, LLC
84	7051 S Bennett Avenue	19			Liberty EBCP, LLC
85	7201-07 S Dorchester Avenue	31			Liberty EBCP, LLC
86	7442-48 S Calumet Avenue	17			Liberty EBCP, LLC
87	7508 S Essex Avenue	35			Liberty EBCP, LLC
88	7546-48 S Saginaw Avenue	41			Liberty EBCP, LLC
89	7600-10 S Kingston Avenue	45			Liberty EBCP, LLC
90	7656-58 S Kingston Avenue	15			Liberty EBCP, LLC
91	7701-03 S Essex Avenue	10			Liberty EBCP, LLC
92	7748-52 S Essex Avenue	46			Liberty EBCP, LLC
93	7957-59 S Marquette Road	20			Liberty EBCP, LLC
94	816-20 E Marquette Road	20			Liberty EBCP, LLC
95	8201 S Kingston Avenue	15			Liberty EBCP, LLC
96-99	8326-58 S Ellis Avenue	77			Liberty EBCP, LLC
		470		470	
<u>Group 9</u>					
67	1131-41 E 79th Place	32	3	35	Fannie Mae
72	7024-32 S Paxton Avenue	21		21	Freddie Mac
		53		56	
<u>Group 10</u>					
900 level	Equity Funds		120	120	n/a
n/a	Unsecured, former, trade creditors, "other"			231	n/a
Total Claims		1991	151	2373	